

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEVIN YAN LUIS,

Plaintiff,

-v.-

MAXIMUM HUMAN PERFORMANCE,
LLC,

Defendant.

23 Civ. 05172 (JHR)

ORDER OF DISMISSAL

JENNIFER H. REARDEN, District Judge:

On June 19, 2023, Plaintiff Kevin Yan Luis filed the Complaint in this action. ECF No. 1. On July 10, 2023, Defendant Maximum Human Performance, LLC was served with process. *See* ECF No. 7. Defendant's answer was due on July 31, 2023. *Id.*; *see also* Fed. R. Civ. P. 12(a)(1)(A)(i) ("A defendant must serve an answer . . . within 21 days after being served with the summons and complaint."). Defendant has not responded to the Complaint or otherwise appeared.

On August 2, 2023, the Court issued an Order to Show Cause, directing Plaintiff to show why this action should not be dismissed for failure to prosecute under Federal Rule of Civil Procedure 41. *See* ECF No. 8. The Court's August 2 Order informed Plaintiff that cause may be shown by requesting a certificate of default from the Clerk of Court and by filing a motion for default judgment by August 10, 2023. *Id.* at 1. Shortly thereafter, upon Plaintiff's application, the Court extended that deadline to August 24, 2023. ECF Nos. 10-11. The Court cautioned Plaintiff that "[f]ailure to submit a timely and proper motion for default judgment may result in dismissal without prejudice of this case under Federal Rule of Civil Procedure 41." ECF No. 8 at 1 (emphasis in original). Nevertheless, Plaintiff failed to file any of the requisite papers by August 24.

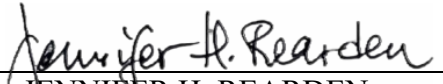
On September 12, 2023, the Court issued an Order affording Plaintiff an additional opportunity to seek a default judgment. *See* ECF No. 22. The September 12 Order instructed Plaintiff as follows: “by **September 13, 2023**, Plaintiff is directed to contact the Clerk’s Office for guidance on properly obtaining a certificate of default”; “[b]y no later than **September 15, 2023**, Plaintiff must obtain a certificate of default”; and “[b]y no later than **September 19, 2023**, Plaintiff must file the required motion papers.” *Id.* (emphases in original). The Court reiterated that “failure to submit a timely and proper motion for default judgment may result in dismissal without prejudice of this case under Federal Rule of Civil Procedure 41.” *Id.* (quoting ECF No. 8 at 1).

To date, Plaintiff has not obtained a certificate of default, filed a motion for default judgment, or otherwise taken any action to make progress in this case. Accordingly, under Federal Rule of Civil Procedure 41(b) and the Court’s inherent power, *see Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-32 (1962), the Court hereby dismisses this case, without prejudice, for failure to prosecute.

The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: September 20, 2023
New York, New York



JENNIFER H. REARDEN
United States District Judge